APPENDIX A.

Opinion of Hon. Walter W. Charamza, Judge of the Municipal Court.

"People versus Bray, CR 15335.

"Gentlemen: The Court has examined all of the books named in the subject case as set out in Counts I through V. All of the comparative material submitted has been examined. The books charged and the comparative material submitted has been examined. The books charged and the comparative material have been evaluated in light of the decisions of the United States Supreme Court, the California Appellate Courts and the provisions of the Penal Code of California.

"It is the Court's conclusion that none of the books set out in Counts I through V are constitutionally protected as a matter of law. The request that the Court dismiss the charges on that basis is denied."

"Walter W. Charamza"

(October 14, 1966)

APPENDIX B.

Judgment of the Appellate Department.

Entered in the Register of Actions on September 6, 1967 W. E. St John, County Clerk, by L. A. Brizzolara, Deputy.

Filed: Sept. 6, 1967.

Appellate Department, Superior Court of the State of California, County of Orange.

The People of the State of California, Plaintiff and Respondent vs. William C. Bray, Defendant and Appellant. No. AP-484 On Appeal from the Municipal Court of the Huntington Beach-Seal Beach Judicial District, Hon. Walter W. Charamza, Judge.

This cause having been argued and submitted, and fully considered, judgment is ordered as follows:

It is Ordered and Adjudged that the judgment made and entered in the Municipal Court of the above designated Judicial District, County of Orange, State of California, in the above entitled cause be and the same is hereby affirmed and the cause remanded to the Municipal Court for further proceedings.

Dated this 6th day of September, 1967.

/s/ William S. Lee
William S. Lee, Judge

/s/ William L. Murray
William L. Murray, Judge

/s/Herbert S. Herlands
Herbert S. Herlands,
Presiding Judge (Acting)

APPENDIX C.

Order Denying Petition for Rehearing and Granting Certification With Questions of Law to Be Settled.

Entered in the Register of Actions on Sept. 19, 1967 W. E. St John, County Clerk, by L. A. Brazzolara, Deputy.

Appellate Department, Superior Court of the State of California, County of Orange.

The People of the State of California, Plaintiff and Respondent, vs. William C. Bray, Defendant and Appellant. No. AP-484 on Appeal from the Municipal Court of the Huntington Beach-Seal Beach Judicial District, Hon. Walter W. Charamza, Judge.

Filed: Sept. 19, 1967.

A Petition for Rehearing and Alternative Petition for Certification having been filed in this Court on September 12, 1967, and said Petition having been considered by this Court:

It is Ordered that the Appellant's Petition for Rehearing is denied, and that Appellant's Alternative Petition for Certification that the case be transferred to the Court of Appeal be, and it is hereby granted.

In accordance with sub-paragraph (e) of Rule 63 of the California Rules of Court, this Court certifies that the important questions of law to be settled are as follows:

(a) Whether the constitutional guarantees of freedom of expression prevent the conviction herein;

(b) Whether irrelevant, immaterial, and illegally-seized material was introduced into evidence in

violation of the California and United States Constitutions;

(c) Whether P.C. Sections 311 and 311.2, as construed and applied by the instructions given relating to *scienter,* are unconstitutional in view of the provisions of the United States and California Constitutions;

(d) Whether P.C. Sections 311 and 311.2, as construed and applied by the trial court, violate constitutional guarantees of freedom of speech, due process, and equal protection of the law.

The judgment of conviction herein was entered in the Huntington Beach-Seal Beach Judicial District, a Municipal Court, and the only judgment of the Superior Court herein was the judgment affirming said conviction rendered by the Appellate Department of the Superior Court, in and for the County of Orange, on September 6, 1967.

Dated this 19th day of September, 1967.

/s/ William S. Lee
William S. Lee, Judge

/s/ William L. Murray
William L. Murray, Judge

/s/ Herbert S. Herlands
Herbert S. Herlands,
Presiding Judge (Acting)

APPENDIX D.

Order Denying Transfer on Certification.

Court of Appeal—State of California, Fourth Appellate District, Division II.

Filed: Oct. 23, 1967.

People, etc. vs. William C. Bray. 4 Crim. No. 3124.

By the Court: Transfer on Certification is DENIED.

Dated October, 20 1967.

Copies to: County Clerk, Santa Ana, 92701, Atty. Genl. L.A. 90012, Clerk, Municipal Court, 520 Magnolia, Huntington Beach Dist. Attny Courthouse, Santa Ana, 92701, Stanley Fleishman, 1680 N. Vine St., L.A. 90028.

McCabe *P. J.*

APPENDIX E.

Constitutional and Statutory Provisions Involved.

1. The pertinent provisions of the First Amendment to the United States Constitution are:

> "Congress shall make no law . . . abridging the freedom of speech, or of the press; . . ."

2. The provisions of the Fourth Amendment to the United States Constitution are:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath and affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

3. The pertinent provisions of the Fourteenth Amendment to the United States Constitution are:

> "No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

4. California Penal Code, §311 provides:

"As used in this chapter:

"(a) 'Obscene' means that to the average person, applying contemporary standards, the predominant appeal of the matter, taken as a whole, is to prurient interest, i.e., a shameful or morbid interest in nudity, sex, or excretion, which goes substantially beyond customary limits of candor in description

or representation of such matters and is matter which is utterly witout redeeming social importance.

"(b) 'Matter' means any book, magazine, newspaper, or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation or any statute or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction or any other articles, equipment, machines or materials.

"(c) 'Person' means any individual, partnership, firm, association, corporation, or other legal entity.

"(d) 'Distribute' means to transfer possession of, whether with or without consideration.

"(e) 'Knowingly' means having knowledge that the matter is obscene."

5. California Penal Code, §311.2 provides:

"Every person who knowingly: sends or causes to be sent, or brings or causes to be brought, into this State for sale or distribution, or in this State prepares, publishes, prints, exhibits, distributes, or offers to distribute, or has in his possession with intent to distribute or to exhibit or offer to distribute, any obscene matter is guilty of a misdemeanor."